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Paper No. 13

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REEDERS, PA 18352-0102

*In re* Application of  
LEVITIN ET AL.  
Application No.: 09/808,962  
Filed: March 16, 2001

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**DECISION ON PETITION**

This is a decision on petitioner's request filed February 24, 2003, requesting withdrawal of the holding of abandonment of the above-identified application because applicant timely submitted a response to the Office communication mailed on May 23, 2002. A supplement to the request was filed on August 7, 2003.

The petition is dismissed.

37 CFR 1.8 (b) states:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Application/Control Number: 09/808,962

Art Unit: 3748

37 CFR 1.33(b) states:

(b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A registered attorney or agent of record appointed in compliance with § 1.34(b);
- (2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);
- (3) An assignee as provided for under § 3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

Petitioner alleges that an amendment was filed on June 17, 2002, and June 25, 2002 by facsimile transmission and that an additional copy was mailed after speaking to the examiner on May 28, 2002. As evidence, petitioner has included copies of telephone bills, a PS form 3811 with USPTO stamp of June 24, 2002, and Notice of Publication Application.

Initially it is noted that the petitions were signed by only one of two inventors. As stated in 37 CFR 1.33(b), all applicants must sign amendments and other papers. While this petition is being considered, no further petitions will be considered unless signed by all applicants. A review of the copy of the amendments submitted reveals that they are unsigned and identify only one of the two inventors. Should petitioners establish that a timely response was submitted, an amendment signed by both applicants must also be submitted. The submission of such amendment will be considered to ratify all previous amendments submitted.

A review of the amendment copies submitted do not indicate that a certificate of transmission was used for the June 17, 2002 and June 25, 2002 transmissions. In addition, no certificate of mailing was found. Copies of telephone bills do not take the place of a certificate of transmission to establish a withdrawal of abandonment.

To establish that a paper not entitled to the benefit of a certificate of mailing or transmission under 37 CFR 1.8(a) without an appropriate showing under 37 CFR 1.8(b) was filed in the USPTO, applicants must have used Express Mail and complied with the provisions of 37 CFR 1.10, or have a post card receipt establishing that the paper was actually received in the USPTO. Other than in these circumstances, the rules do not provide a mechanism for establishing that such a paper was filed in the USPTO.

Petitioner's PS form 3811 with USPTO stamp of June 24, 2002 does not establish that an amendment for this application was received in the USPTO, as it does not identify this application by the application number or provide an itemized listing of papers submitted as would have been needed for a post card receipt that establishes that a paper was actually received in the USPTO.

Application/Control Number: 09/808,962

Art Unit: 3748

Petitioners may file a renewed petition, without fee, addressing the points raised above. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." Alternatively, petitioners may wish to consider filing a petition to revive under 37 CFR 1.137. See also MPEP 711.03(c). The rules and MPEP sections cited may be found on the USPTO website at: [www.uspto.gov](http://www.uspto.gov).



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